

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VAN MONROE WASHINGTON,

No. C 11-4050 WHA (PR)

Petitioner,

**ORDER GRANTING MOTION TO
DISMISS**

v.

MIKE MCDONALD, Warden,

(Docket No.8)

Respondent.

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254. Respondent has filed a motion to dismiss the petition on the grounds that is a second or successive petition. Petitioner has filed an opposition, and respondent has filed a reply brief.

Petitioner filed a prior federal habeas petition challenging the same state court judgment that the instant petition challenges, and the prior petition was denied on its merits. *See Washington v. Runnels*, No. C 03-1777 WHA (PR) (N.D. Cal. April 12, 2006). A second or successive petition may not be filed in this court unless petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this court to consider the petition. *See* 28 U.S.C. § 2244(b)(3)(A). Petitioner has not sought or obtained such an order from the Ninth Circuit. Respondent's motion to dismiss the petition (docket number 8) is accordingly **GRANTED** and the petition is **DISMISSED** without prejudice to refile if petitioner obtains the necessary order from the Ninth Circuit.

1 Rule 11(a) of the Rules Governing Section 2254 Cases now requires a district court to
2 rule on whether a petitioner is entitled to a certificate of appealability in the same order in
3 which the petition is dismissed. Petitioner has failed to make a substantial showing that
4 reasonable jurists would find it debatable whether the district court was correct in its procedural
5 ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Consequently, no certificate of
6 appealability is warranted in this case.

7 The clerk shall enter judgment and close the file.

8 **IT IS SO ORDERED.**

9 Dated: May 15, 2012.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE